

## **§ 417.10**

the hearing, or except as the Administrative Law Judge or Director may direct by reopening the hearing.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964; 78 FR 8025, Feb. 5, 2013]

### **§ 417.10 Rights of participants.**

Every interested person shall have the right to present oral or documentary evidence, to submit evidence in rebuttal, and to conduct such examination or cross-examination as may be required for a full and true disclosure of the facts (subject to the rulings of the Administrative Law Judge), and to object to admissions or exclusions of evidence. The Department of Labor, through its officers and attorneys shall have all rights accorded interested persons by the provisions of this subpart A.

### **§ 417.11 Objections to evidence.**

Objections to the admission or exclusion of evidence may be made orally or in writing, but shall be in short form, stating the grounds for such objection. The transcript shall not include argument or debate thereon except as required by the Administrative Law Judge. Rulings on such objections shall be a part of the transcript. No such objections shall be deemed waived by further participation in the hearing. Formal exceptions are unnecessary and will not be taken to rulings on objections.

### **§ 417.12 Proposed findings and conclusions.**

Within 10 days following the close of hearings, interested persons may submit proposed findings and conclusions to the Administrative Law Judge, together with supporting reasons therefor, which shall become a part of the record.

### **§ 417.13 Initial decision of Administrative Law Judge.**

Within 25 days following the period for submitting proposed findings and conclusions, the Administrative Law Judge shall consider the whole record, file an initial decision as to the adequacy of the constitution and bylaws for the purpose of removing officers with the Administrative Review Board, and forward a copy to each party par-

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ticipating in the hearing. His decision shall become a part of the record and shall include a statement of his findings and conclusions, as well as the reasons or basis therefor, upon all material issues.

[29 FR 8264, July 1, 1964, as amended at 78 FR 8025, Feb. 5, 2013]

### **§ 417.14 Form and time for filing of appeal with the Administrative Review Board.**

(a) An interested person may appeal from the Administrative Law Judge's initial decision by filing written exceptions with the Administrative Review Board within 15 days of the issuance of the Administrative Law Judge's initial decision (or such additional time as the Administrative Review Board may allow), together with supporting reasons for such exceptions. Blanket appeals shall not be received. Impertinent or scandalous matter may be stricken by the Administrative Review Board, or an appeal containing such matter or lacking in specification of exceptions may be dismissed.

(b) In the absence of either an appeal to the Administrative Review Board or review of the Administrative Law Judge's initial decision by the Administrative Review Board on his own motion, such initial decision shall become the decision of the Administrative Review Board.

[29 FR 8264, July 1, 1964, as amended at 78 FR 8025, Feb. 5, 2013]

### **§ 417.15 Decision of the Administrative Review Board.**

Upon appeal filed with the Administrative Review Board pursuant to § 417.14, or within his discretion upon his own motion, the complete record of the proceedings shall be certified to him; he shall notify all interested persons who participated in the proceedings; and he shall review the record, the exceptions filed and supporting reasons, and shall issue a decision as to the adequacy of the constitution and bylaws for the purpose of removing officers, or shall order such further proceedings as he deems appropriate. His decision shall become a part of the record and shall include a statement of his findings and conclusions,

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as well as the reasons or basis therefor, upon all material issues.

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964; 78 FR 8025, Feb. 5, 2013]

### **Subpart B—Procedures Upon Failure of Union To Take Appropriate Remedial Action Following Subpart A Procedures**

#### **§ 417.16 Initiation of proceedings.**

(a) Any member of a local labor organization may file a complaint with the Office of Labor-Management Standards alleging that following a finding by the Administrative Review Board pursuant to subpart A that the constitution and bylaws of the labor organization pertaining to the removal of officers are inadequate, or a stipulation of compliance with the provisions of section 401(h) of the Act reached with the Chief, DOE in connection with a prior charge of the inadequacy of a union's constitution and bylaws to remove officers, as provided in subpart A of this part, the labor organization (1) has failed to act within a reasonable time, or (2) has violated the procedures agreed to with the Chief, DOE, or (3) has violated the principles governing adequate removal procedures under § 417.2(b).

(b) The complaint must be filed pursuant to section 402(a) of the Act within one calendar month after one of the two following conditions has been met:

(1) The member has exhausted the remedies available to him under the constitution and bylaws of the organization, or

(2) The member has invoked such remedies without obtaining a final decision within three calendar months after invoking them.

[59 FR 65716, Dec. 21, 1994, as amended at 62 FR 6093, Feb. 10, 1997; 78 FR 8025, Feb. 5, 2013]

#### **§ 417.17 Investigation of complaint and court action.**

The Office of Labor-Management Standards shall investigate such complaint, and if upon such investigation the Secretary finds probable cause to believe that a violation of section 401(h) of the Act has occurred and has not been remedied, the Secretary shall within 60 days after the filing of such

complaint, bring a civil action against the labor organization in the district court of the United States for the district in which such labor organization maintains its principal office, to direct the conduct of a hearing and vote upon the removal of officer(s) under the supervision of the Director as provided in section 402(b) of the Act.

[59 FR 65717, Dec. 21, 1994, as amended at 78 FR 8025, Feb. 5, 2013]

#### **§ 417.18 Hearings—removal of officers of local labor organizations.**

Hearings pursuant to order of the court and concerning the removal of officers under section 402(b) of the Act shall be for the purpose of introducing testimony and evidence showing why an officer or officers accused of serious misconduct should or should not be removed. Hearings shall be conducted by the officers of the labor organization (subject to § 417.19) in accordance with the constitution and bylaws of the labor organization insofar as they are not inconsistent with title IV of the Act, or with the provisions of this part 417: *Provided, however*, That no officer(s) accused of serious misconduct shall participate in such hearings in any capacity except as witness or counsel.

#### **§ 417.19 Director's representative.**

The Director shall appoint a representative or representatives whose functions shall be to supervise the hearing and vote. Such representative(s) shall have final authority to issue such rulings as shall be appropriate or necessary to insure a full and fair hearing and vote. Upon his own motion or upon consideration of the petition of any interested person the Director's Representative may disqualify any officer(s) or member(s) of the union from participation in the conduct of the hearing (except in the capacity of witness or counsel).

[29 FR 8264, July 1, 1964, as amended at 29 FR 8480, July 7, 1964 ; 78 FR 8025, Feb. 5, 2013]

#### **§ 417.20 Notice of hearing.**

Notice of hearing, not less than 10 days in advance of the date set for such